

On August 16, 2005, the Attorney General issued an opinion related to term limits. What follows here is a copy of an article in the recent Special District Association (SDA) newsletter which provides a thorough explanation of the content of the opinion.

NEW ATTORNEY GENERAL OPINION CLARIFIES TERM LIMITS
Evan Goulding, Executive Director, Special District Association

Colorado Attorney General John Suthers has issued a new Formal Opinion No. 05-04, dated August 16, 2005, which clarifies two issues relating to term limits. Both of the questions potentially affect special district director elections.

The **first question** concerns the applicability of term limits to persons who are declared elected after an election is cancelled because no challengers are running. Apparently, some special districts contended that because they were “declared elected” after the election was cancelled due to there not being more candidates than offices to be filled at the election, they are not “elected officials,” and thus not subject to term limits.

After reviewing the case law precedents, the Opinion declares that to adopt such an interpretation would lead to illogical and inconsistent results, which are not supported by law. **The opinion holds that the term “elected official,” as used in the Term Limits Amendment, includes persons elected to a local office at an actual election or deemed elected as a result of a cancelled election** (*bold inserted*).

The **second question** is a clarification of Attorney General’s Opinion No. 2000-2, which states that the limits set forth in the Term Limits Amendment do not include appointments to fill vacancies for parts of terms.

Pursuant to the previous Opinion No. 2000-2, most special district attorneys have felt that when a person is appointed to fill a vacancy for the remaining part of a term, that partial term would not count as a term in determining when the person would be limited. The new opinion reaffirms that principle, but goes on to speak to another situation which has arisen, wherein a director serving in a second full term, resigns prior to the end of the term, then immediately runs for election for a new four year term, claiming that the term from which the director resigns was then not a full term, and would not count against the term limit.

Citing cases that hold that a resignation will not be recognized if the resignation effectively allows the officeholder to avoid compliance with the law, the opinion holds that in this context, resignations likely would result in avoidance of the term limits in the Term Limits Amendment. **A person who resigns from office will be deemed to have served a complete term. Consequently, a director who resigns before the end of a second term would be deemed to have served the full term, and would be ineligible to run for a subsequent term until after the passage of four years since the end of the term from which the director resigns** (*bold inserted*).

Copies of the Attorney General Formal Opinion, No. 05-04 can be obtained at the Colorado Attorney General’s website, www.ago.state.co.us . Click on “AG Opinions” on the left hand tab, then click on “2005” and then, locate “No. 05-04.”